

Amendment No. 2 to SB1009

Faulk
Signature of Sponsor

AMEND Senate Bill No. 1009*

House Bill No. 1760

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 66-28-102, is amended by adding the following new appropriately designated subsection thereto:

(d) This chapter shall not apply to any occupancy in a public housing unit or other housing unit that is subject to regulation by the department of housing and urban development and owned by a governmental entity or non-profit corporation to the extent such regulation conflicts with state law; but shall apply to the extent that any such regulations defer to the application of state law.

SECTION 2. Tennessee Code Annotated, Section 66-28-104, is amended by adding the following appropriately designated subdivisions thereto:

() “Substantially impaired” means that a dwelling unit or premises has been deemed unfit for human habitation by a governmental authority;

() “Utilities” means the provision of water, electricity, sewer or natural gas;

SECTION 3. Tennessee Code Annotated, Title 66, Chapter 28, Part 1, is amended by adding the following new section thereto:

§ 66-28-108.

If the tenant provides an electronic mail address in the rental agreement, any notification required to be sent to the tenant pursuant to this chapter may be made by the landlord through electronic notification to such mail address, unless a provision in this chapter requires a specific form of notification other than electronic notification; provided, however, the landlord shall not require the tenant to provide an electronic mail address as a condition of entering into a rental agreement.

SECTION 4. Tennessee Code Annotated, Section 66-28-201(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d) There shall be a five-day grace period beginning the day the rent was due to the day a fee for the late payment of rent may be charged. The date the rent was due shall be included in the calculation of the five-day grace period. If the last day of the five-day grace period occurs on a Sunday or legal holiday, as defined in § 15-1-101, the landlord shall not impose any charge or fee for the late payment of rent, provided that the rent is paid on the next business day. Any charge or fee, however described, which is charged by the landlord for the late payment of rent, shall not exceed ten percent (10%) of the amount of rent past due.

SECTION 5. Tennessee Code Annotated, Section 66-28-202(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) Any person or persons taking possession without payment of rent and failing to sign a written rental agreement delivered to them by the landlord or who enter without oral agreement are deemed to be trespassers and may be evicted forthwith and may be held liable for damages and rent for the term of trespass and reasonable attorney's fees; provided that if such person or persons pay rent, which is accepted by the landlord, such person or persons shall become tenants of the landlord.

SECTION 6. Tennessee Code Annotated, Section 66-28-301(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) Except as otherwise provided in subdivision (b)(2)(B), the tenant shall have the right to inspect the premises to determine the tenant's liability for physical damages that are the basis for any charge against the security deposit. An inspection of the premises to determine the tenant's liability for physical damages that are the basis for any charge against the security deposit and the landlord's estimated costs to repair such damage shall be conducted as follows:

(1)

(A) Upon request by the landlord for a tenant to vacate or within five (5) days after receipt by the landlord of written notice of the tenant's intent to vacate, the landlord may provide notice to the tenant of the tenant's right to be present at the inspection of the premises. Such notice may advise the tenant that the tenant may request a time of inspection to be set by the landlord during normal working hours. The landlord may require the inspection to be after the tenant has completely vacated the premises and is ready to surrender possession and return all means of access to the entire premises; provided, that the inspection shall be either on the day the tenant completely vacates the premises or within four (4) calendar days of the tenant vacating the premises. If the landlord provides written notice of the tenant's right to be present at the landlord's inspection and the tenant schedules an inspection, but fails to attend such inspection, the tenant waives the right to contest any damages found by the landlord as a result of such inspection by the landlord; provided that notice of the tenant's waiver upon such circumstances is set out in the rental agreement.

(B) If a tenant requests a mutual inspection as provided in subdivision (b)(1)(A), the landlord and tenant shall then inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The landlord and tenant shall sign the listing. Except as provided in § 66-28-301(g), the signatures of the landlord and the tenant on the listing shall be conclusive evidence of the accuracy of the listing. If the tenant refuses to sign the listing, the tenant shall state specifically in writing the items on the list to which the tenant dissents.

(2)

(A) If the tenant has acted in any manner set out in subdivisions (b)(2)(B)(i) – (vi), the landlord may inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage without providing the tenant an opportunity to inspect the premises; provided, that the landlord provides a written copy, sent by certificate of mailing to the tenant, of the listing of any damages and estimated cost of repairs to the tenant upon the tenant's written request.

(B) The tenant shall not have a right to inspect the premises as provided in this section if the tenant has:

- (i) Vacated the rental premises without giving written notice;
- (ii) Abandoned the premises;
- (iii) Been judicially removed from the premises;
- (iv) Not contacted the landlord after the landlord's notice of right to mutual inspection of the premises;
- (v) Failed to appear at the arranged time of inspection as provided in subdivision (b)(1); or
- (vi) If the tenant has not requested a mutual inspection pursuant to subdivision (b)(1)(A) or is otherwise inaccessible to the landlord.

SECTION 7. Tennessee Code Annotated, Section 66-28-301(a), is amended by deleting the last sentence.

SECTION 8. Tennessee Code Annotated, Section 66-28-301(c), is amended by deleting the subsection in its entirety and substituting instead the following:

(c) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in an account as required by subsection (a) and a listing of damages is not provided as required by subsection (b).

SECTION 9. Tennessee Code Annotated, Section 66-28-301(g), is amended by deleting the subsection in its entirety and substituting instead the following:

(g) Nothing in this section precludes the landlord from recovering the costs of any and all contractual damages to which the landlord may be entitled, plus the cost of any additional physical damages to the premises that are discovered after an inspection that has been completed pursuant to subsection (b); provided, however, costs of any physical damage to the premises may only be recovered if the damage was discovered by the landlord prior to the earlier of:

(1) Thirty (30) days after the tenant vacated or abandoned the premises;

or

(2) Seven (7) days after a new tenant takes possession of the premises.

SECTION 10. Tennessee Code Annotated, Section 66-28-403, is amended by deleting the section in its entirety and substituting instead the following:

(a) The tenant shall not unreasonably withhold consent to the landlord to enter onto the premises, including entering into the dwelling unit, in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the premises to prospective or actual purchasers, mortgagees, workers or contractors.

(b) The landlord may enter the premises without consent of the tenant in case of emergency. "Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

(c) Where no known emergency exists, if any utilities have been turned off due to no fault of the landlord, the landlord shall be permitted to enter the premises. The landlord may inspect the premises to ascertain any damages to the premises and make necessary repairs of damages resulting from the lack of utilities.

(d) The landlord shall not abuse the right of access or use it to harass the tenant.

(e) The landlord has no right of access to the premises except:

(1) By court order;

(2) As permitted by this section, § 66-28-506 and § 66-28-507(b);

(3) If the tenant has abandoned or surrendered the premises;

(4) If the tenant is deceased, incapacitated or incarcerated; or

(5) Within the final thirty (30) days of the termination of the rental

agreement for the purpose of showing the premises to prospective tenants provided such right of access is set forth in the rental agreement and notice is given to the tenant at least twenty-four (24) hours prior to entry.

SECTION 11. Tennessee Code Annotated, Section 66-28-505, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) Except as otherwise provided in subsection (b), if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with § 66-28-401 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement shall terminate as provided in subdivisions (a)(2) or (a)(3).

(2) If the breach for which notice was given in subdivision (a)(1) is remediable by the payment of rent, the cost of repairs, damages, or any other amount due to the landlord pursuant to the rental agreement, the landlord may inform the tenant that if the breach is not remedied within fourteen (14) days after receipt of such notice, the rental agreement shall terminate upon a date not less than thirty (30) days after receipt of the notice, subject to the following:

(A) All repairs to be made by the tenant to remedy the tenant's breach must be requested in writing by the tenant and authorized in writing by the landlord prior to such repairs being made; provided,

however, that the notice sent pursuant to subdivision (a)(2) shall inform the tenant that prior written authorization must be given by the landlord to the tenant pursuant to this subdivision (a)(2)(A); and

(B) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement.

(3) If the breach for which notice was given in subdivision (a)(1) is not remediable by the payment of rent, the cost of repairs, damages, or any other amount due to the landlord pursuant to the rental agreement, the landlord may inform the tenant that the rental agreement shall terminate upon a date not less than thirty (30) days after receipt of the notice.

(4) Nothing in subdivision (a)(2) or (a)(3) shall be construed as requiring a landlord to provide additional notice to the tenant other than the notice required by this section.

(b) Notwithstanding subsection (a), if the tenant waives any notice required by this section, the landlord may proceed to file a detainer warrant immediately upon breach of the agreement for failure to pay rent without the landlord providing notice of such breach to the tenant; provided, however, this subsection (b) shall not reduce the tenant's grace period as provided in § 66-28-201. The tenant's waiver pursuant to this subsection (b) shall be set out in twelve (12) point bold font or larger in the rental agreement.

(c) Notwithstanding notice of a breach or the filing of a detainer warrant pursuant to this section, the rental agreement is enforceable by the landlord for the collection of rent for the remaining term of the rental agreement.

(d) Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental

agreement or § 66-28-401. The landlord may recover reasonable attorney's fees for breach of contract and nonpayment of rent as provided in the rental agreement.

(e) The landlord may recover punitive damages from the tenant for willful destruction of property caused by the tenant or by any other person on the premises with the tenant's consent.

SECTION 12. Tennessee Code Annotated, Section 66-28-512(c), is amended by deleting the subsection in its entirety and substituting instead the following:

(c) If a tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession, back rent and reasonable attorney's fees as well as any other damages provided for in the lease. If the tenant's holdover is willful and not in good faith, the landlord, in addition, may also recover actual damages sustained by the landlord, plus reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, § 66-28-201(c) shall apply.

SECTION 13. Tennessee Code Annotated, Section 66-28-517(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) A landlord may terminate a rental agreement within three (3) days from the date written notice is received by the tenant if the tenant or any other person on the premises with the tenant's consent:

(1) Willfully or intentionally commits a violent act;

(2) Behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises; or

(3) Creates a hazardous and unsanitary condition on the property that affects the health, safety or welfare or the life or property of other tenants or persons on the premises.

SECTION 14. Tennessee Code Annotated, Section 66-28-521, is amended by deleting the language "ten (10)" and substituting instead the language "three (3)".

SECTION 15. Tennessee Code Annotated, Section 66-28-521, is amended by deleting the last sentence in its entirety.

SECTION 16. This act shall take effect July 1, 2011, the public welfare requiring it.